IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7075 of 1999

to

FIRST APPEAL No 7090 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT THRO'

Versus

ANDARSINH DESAIBHAI

Appearance:

MR SJ DAVE, AGP for Appellants

MR MR SHAH, for Respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 10/05/2000

COMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 26th February, 1999, rendered by the learned Civil Judge (S.D.), Godhara in Land Acquisition Reference Nos. 344/89 to 359/89. As common questions of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Executive Engineer, Narmada Project Main Canal, sent a proposal to the Government to acquire agricultural lands of village Khandoli, Ta: Kalol, District : Panch Mahals for the public purpose of laying down canals under Narmada Project. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants-respondents situated in village Khandoli, was issued under Section 4(1) of the Act, which came to be published in the Government Gazette on 17th September, 1986. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Khandoli which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose as aforesaid. Therefore, declaration under Section 6 of the Act was made. Land Acq. Officer, on the basis of the material placed before him, made his award on 18th July, 1989 and offered compensation to the claimants in respect of acquired lands of village Khandoli at the rate of Rs.13500/ per Hectare for irrigated lands and Rs. 9000/ per Hectare for non-irrigated lands. Compensation offered by the Land Acq. Officer was accepted by the claimants with protest. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Godhara, which were numbered as Land Acquisition Reference Nos. 344/89 to 359/89. All the Land Acquisition References came to be consolidated and the parties led common evidence in Land Acq. Reference No.344/89.

3. Before the Reference Court, the claimants claimed compensation at the rate of Rs. 10/ per sq.mt. To substantiate their claim, claimant of Land Acq. Reference No. 357/89 namely Ranjitsinh Narsinh Parmar was examined at exh.38. Witness produced certified copies of the extract of village form no. 7/12 at exh.13 to 29. Witness also produced certified copy of the judgment and award rendered in Land Ref. Case No. 156/90 rendered by learned Jt. District Judge, Panch Mahals at Godhara in respect of the acquired lands of village Khandoli. Certified copy of the judgment and order passed by the High Court in first appeals filed against the award rendered in Land Acq. Reference No. 156/90 was produced at exh.31. Order of the Supreme Court in Special Leave Petition filed against the judgment and order rendered by the High Court in first appeals in which previous award rendered in Land Acq. Reference No. 156/90 was challenged, was produced at exh.32. Witness Ranjitsinh Parmar, exh.38, deposed that acquired lands of previous award exh.30 were situated in the same village Khandoli and were having same fertility and agriculturists of both the lands were raising similar crops. Witness further deposed that in the present acquired lands, the agriculturists used to raise three crops in a year and getting net yearly income of Rs. 8000/ to Rs. 9000/ per Vigha. He further deposed that acquired lands are situated at a distance of about 2 kms. away from taluka Head Quarter Kalol. It was stated by the witness that village Khandoli was having facility of school, electricity, bus service etc. On behalf of the appellant, no evidence, either oral or documentary, was produced before the Reference Court. Reference Court, for determination of market value of the present acquired lands situated at village Khandoli, relied on the previous award exh.30 rendered in Land Acq. Reference No. 156/90 wherein learned Jt.District Judge, Godhara had determined market price of the same village at Rs.7.00 per sq.mt. for the acquisition which has taken place by publication of notification under sec. 4(1) of the Act on 20th September, 1986. Reference Court further observed that previous award exh.30 was challenged in the High Court and the High Court has summarily dismissed the appeals. Said judgment of the High Court was further challenged in the Supreme Court by way of Special Leave Petition and Hon'ble Supreme Court had rejected Special Leave Petition, certified copy of which was placed on record at exh. 32. Thus, previous award exh.30 rendered in Land Acq. Reference No. 156/90 which was in respect of the acquired lands of the same village Khandoli, had become final. Reference Court, therefore, relying on previous award exh.30, determined market value of the

acquired lands at the uniform rate of Rs. 7.00 per sq.mt. both for irrigated and non-irrigated lands giving rise to these appeals.

4. Learned AGP Mr. S.J.Dave has supplied relevant evidence and documents for deciding present appeals. We have perused the copies of evidence and relevant documents supplied by learned AGP Mr. Dave as well as learned counsel Mr. M.R.Shah for the respondents claimants.

5. It is submitted by learned AGP Mr. Dave that previous award exh.30 was not relevant and comparable for determination of market value of the present acquired lands. It is submitted that the award of the Reference Court was excessive and, therefore, these appeals be admitted and allowed.

6. We do not find any merits in the contentions raised by learned AGP Mr. Dave. It is well settled that one of the method for determination of market value of acquired land is to base reliance on the previous award in respect of similar lands having same fertility and situation wherein notification under sec. 4(1) of the Act was issued in near proximity of time. It is also well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from the same or adjoining village. In our opinion, award exh.30 which had become final up to the stage of Supreme Court wherein market value was determined at the rate of Rs. 7.00 per sq.mt. is relevant and comparable for determination of the market value of the present acquired lands. Lands of previous award exh.30 and present acquired lands were acquired by notification under sec.4(1) of the Act in near proximity of time. By no stretch of imagination, it can be said that previous award exh.30 was not relevant and comparable for determination of the market value of the present acquired lands.

7. Learned counsel Mr. M.R.Shah has also drawn our attention that in Land Acq.Reference No. 75/90 decided by the learned Civil Judge (S.D.), Godhara on 26th February, 1999 in respect of acquired lands of the same village Khandoli, market value of the lands of village Khandoli was determined at the rate of Rs.7.00 per sq.mt. and the said award was not challenged by the State Government or the Land Acq. Officer in higher forum. Therefore, it becomes evident that the market value of

the acquired lands of village Khandoli was determined at the rate of Rs. 7.00 per sq.mt. as on in the year 1986. Reference Court, by the impugned common judgment and award, determined market value of the acquired lands at the uniform rate of Rs. 7.00 per sq.mt. both for irrigated and non-irrigated lands. We do not find any error committed by the Reference Court in awarding uniform rate of compensation for the acquired lands by treating them as irrigated lands at the rate of Rs.7.00 per sq.mt. The evidence of the claimants' witness exh.38 and the certified copies of 7/12 extracts indicate that all the lands were irrigated lands. We, therefore, confirm the market value determined by the Reference Court of the acquired lands of village Khandoli at the rate of Rs. 7.00 per sq.mt. The statutory benefits extended to the respondents under the provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and does not call for any interference in these appeals. However, we make it clear that respondents shall not be entitled to solatium on the amount under sec.23(1-A) of the Act and interest on the amount of solatium as per the decision of the Supreme Court reported in JT 1995(2) SC 583.

8. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

10.5.2000 [M.H. KADRI, J]

[C.K. BUCH, J]

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